

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF:  
Land at 1660 Oak Tree Road

Edison Township, Middlesex County,  
New Jersey

Respondent: Extra Space Properties Thirty  
Six, LLC

ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION

U.S. EPA Region II  
CERCLA Docket No. 02-2012-2025

Proceeding Under Sections 104, 106(a), 107  
and 122 of the Comprehensive  
Environmental Response, Compensation,  
and Liability Act, as amended, 42 U.S.C. §§  
9604, 9606(a), 9607 and 9622

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## **I. JURISDICTION AND GENERAL PROVISIONS**

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Respondent Extra Space Properties Thirty Six, LLC ("Respondent"). This Settlement Agreement provides for the performance of a removal action by Respondent and the reimbursement of certain response costs incurred by the United States at or in connection with certain land owned by Respondent located at 1660 Oak Tree Road in Edison Township, Middlesex County, New Jersey.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§9604, 9606(a), 9607 and 9622, as amended ("CERCLA").

3. EPA has notified the State of New Jersey Department of Environmental Protection (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agree that it will not contest the basis or validity of this Settlement Agreement or its terms.

## **II. PARTIES BOUND**

5. This Settlement Agreement applies to and is binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement Agreement.

6. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and that each complies with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

### III. DEFINITIONS

7. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.
- c. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXXII.
- d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- e. "New Jersey Department of Environmental Protection" or "NJDEP" shall mean the New Jersey Department of Environmental Protection and any successor departments or agencies of the State.
- f. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs after May 31, 2012 in preparing and negotiating this Settlement Agreement, in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 32 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation) Paragraph 42 (Emergency Response), and Paragraph 60 (Work Takeover).
- g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

i. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXXI). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

j. "OTR Land" shall mean the real property located at 1660 Oak Tree Road, Edison, N.J. 08820 and known as Lot 39.A in Block 546.1 in the Tax Map of the Township of Edison, New Jersey.

k. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

l. "Parties" shall mean EPA and Respondent.

m. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

n. "Respondent" shall mean Extra Space Properties Thirty Six LLC..

o. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

p. "Site" shall mean the real property located at 1660 Oak Tree Road in Edison Township, Middlesex County, New Jersey (the "OTR Land") and all land in close proximity thereto onto which access is needed to implement the terms of this Settlement Agreement.

q. "State" shall mean the State of New Jersey.

r. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

s. "Work" shall mean all activities Respondent are required to perform under this Settlement Agreement.

#### **IV. EPA FINDINGS OF FACT**

8. The Site includes the OTR Land and various properties in the vicinity of the OTR Land onto which access may be needed to implement the terms of this Settlement Agreement.

9. In 2009, the Respondent acquired title to the OTR Land from Extra Space of New Jersey, L.L.C. as noted by deed dated July 7, 2009. The Respondent is the current owner of the OTR Land. The OTR Land is currently used for commercial purposes.

10. All of the OTR Land exists within the footprint of land that was once owned by Caswell, Strauss & Co., Inc. ("Caswell") prior to 1959. At various times from the 1940s to 1959, Caswell carried out a lead smelting operation on the land it owned at the Site, including on the OTR Land. As a result of those operations, various metals, including lead, were released onto and remain in the soil at the land Caswell once owned and on the OTR Land.

11. In October and November 2011, the New Jersey Department of Environmental Protection ("NJDEP") performed soil sampling at the Site. Lead was detected at 3,320 parts per million (ppm) in a surface soil sample collected on a residential property located in the vicinity of the OTR Land and 14,300 ppm in a soil sample collected at the 6-12" depth on the OTR Land.

12. EPA conducted soil sampling at the Site from January 30 to February 9, 2012 at some of the residential properties and the OTR Land. Four of the ten residential properties sampled had lead concentrations in the surface soils in exceedance of the EPA residential screening level of 400 ppm lead. Samples collected on the OTR Land contained lead at concentrations ranging from 18 ppm to 60,100 ppm. EPA's screening level for lead on commercial properties is 800 ppm.

13. From May 7 to May 25, 2012, soil sampling was conducted by EPA at additional residential properties located adjacent to the Site. Elevated lead concentrations were found on residential properties located on Henry Street and on Libby Court.

14. Lead is a hazardous substance as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). The New Jersey State Soil Cleanup Criterion ("NJSSCC") for lead for Residential Direct Contact is 400 ppm. The NJSCC for lead for Non- Residential Direct Contact is 600 ppm.

15. Respondent is the current owner of the OTR Land. Lead exists in surface and subsurface soil on the OTR Land at levels which exceed 800 ppm. Lead exists in surface and subsurface soils on residential properties at levels which exceed 400 ppm. The levels of lead which were detected in surface soil and subsurface soil on the OTR Land are sufficiently elevated to warrant a response action under CERCLA.

16. Respondent alleges that Respondent made all appropriate inquiry into the previous uses of the OTR land but did not discover that hazardous substances had been disposed of on it by a previous owner who did not disclose that information to Respondent at the time of Respondent's acquisition of the OTR Land.

## **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

17. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is the "owner of the facility", as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

e. The Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of a response action and for response costs incurred and to be incurred at the Site.

f. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

g. The removal action required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

## **VI. SETTLEMENT AGREEMENT AND ORDER**

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

**VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR,  
AND ON-SCENE COORDINATOR**

18. Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within 15 days of the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 5 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 12 days of EPA's disapproval.

19. Within 5 days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 3 days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by the Respondent.

20. EPA has designated Ms. Kelli Lucarino of the Emergency and Remedial Response Division, USEPA Region 2, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the OSC electronically and at 2890 Woodbridge Ave, MS-211, Edison, NJ 08837.

21. EPA and Respondent shall have the right, subject to Paragraph 19, to change its respective designated OSC or Project Coordinator. Respondent shall notify EPA 7 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

**VIII. WORK TO BE PERFORMED**

22. Respondent shall perform, at a minimum, all actions necessary to implement the Work. The actions to be implemented generally include, but are not limited to, the following

- Implementation of measures to eliminate direct contact with lead contaminated surface soils above 800 ppm at the OTR Land and to prevent the transportation of lead contaminated soil with surface runoff to any lands adjoining the OTR Land;



- Design and construction of surface water runoff control measures to prevent surface water runoff from the OTR Land from migrating onto any of the adjoining properties in a manner compliant with Federal, State and local law(s);
- Post-excavation sampling, as needed;
- Site restoration; and
- Maintenance activities as needed.

23. Within 14 days after the effective date of this Order, Respondent shall submit to EPA for approval a Work Plan for performance of the removal action to mitigate the exposure to lead in soil at the OTR Land and migration of lead from the OTR Land. The Work Plan shall provide the details to address the Work to be performed.

The Work Plan shall include a detailed description of how the tasks referred to in Paragraph 22 above, will be accomplished, and shall also include, but not be limited to, the following:

- (1) Maps depicting, to the extent known and determined, all work and safety zones, contaminated reduction zones, staging and sampling areas, waste segregation areas, and command posts, all located from fixed reference points and plotted to scale.
- (2) A Quality Assurance/Quality Control Plan ("QAPP") that details sampling procedures, methods and analytical parameters to be used to analyze samples collected from the Site.
- (3) A Health and Safety Plan ("HSP"), that ensures the protection of the public health and safety during performance of Work under this Agreement and Order.
- (4) A Site Summary Report describing the site background and description; previous sampling activities and analytical results (to the extent such information is known or can be determined by Respondent); and definition of the source, nature and extent of contamination.
- (5) A Community Air Monitoring Plan describing the procedure(s) to conduct air and dust monitoring in the work areas and the perimeter of the Site to protect the public from exposure to any contaminants during the mitigation activities;
- (6) A Transportation and Disposal Plan that outlines procedures for the proper transportation and disposal of all hazardous substances, pollutants, and contaminants as well as hazardous waste and any solid waste generated during the Work;

- (7) A plan for providing Site security including, but not limited to, measures to be taken to keep unauthorized personnel from entering restricted work areas;
- (8) A plan for OTR Land restoration and maintenance; and
- (9) A plan for Post-Removal Site Control; and
- (10) A detailed schedule for performance of specific tasks at the Site.

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within 7 days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondent shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 23(b).

24. Health and Safety Plan. Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

25. Quality Assurance and Sampling.

The QAPP shall include detailed procedures, methods and sampling parameters to be implemented to sample and analyze the contaminants found in soil at the OTR Land. The QAPP will also include detailed procedures, methods, and sampling parameters to be utilized for post-excavation sampling and soil disposal. Appropriate sampling and analysis methods (e.g., sample frequency, compositing techniques, etc.), as necessary shall be utilized for the proper disposal of contaminated soil.

All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall incorporate these procedures in accordance with the

Uniform Federal Policy for Implementing Quality Systems ("UFP-QS"), EPA-505-F-03-001, March 2005; Uniform Federal Policy for Quality Assurance Project Plans ("UFP-QAPP"), Parts 1, 2, and 3, EPA-505-B-04-900A, B, and C, March 2005 or newer; and the guidance and procedures located at the EPA Region 2 DESA/HWSB web site: <http://www.epa.gov/region02/qa/documents.htm>

- a. Subsequent amendments to the above, upon notification by EPA to Respondents of such amendments, shall apply only to procedures conducted after such notification.
- b. The QAPP shall require that any laboratory utilized by Respondents is certified for the matrix/analyses which are to be conducted for any work performed pursuant to this Order, by one of the following accreditation/certification programs: USEPA Contract Laboratory Program ("CLP"), National Environmental Laboratory Accreditation Program ("NELAP"), American Association for Laboratory Accreditation ("A2LA"), or a certification issued by a program conducted by a state, and acceptable to EPA, for the analytic services to be provided. The QAPP shall require the Respondents to submit laboratory certificates from such accreditation programs that are valid at the time samples are analyzed. If a specific analytical service is unavailable from a certified laboratory, EPA may within its discretion, approve Respondents' utilization of a laboratory that is not certified. EPA approval shall be based on Respondents' submittal of a written request, submittal of the laboratory quality assurance plan, and the laboratory's demonstration of capability through the analysis of Performance Evaluation samples for the constituents of concern.
- c. In any contract(s) which the Respondent (or any agent, subcontractor or consultant hired by Respondent) enters with laboratories for the purpose of performing analyses of samples collected pursuant to this Settlement Agreement, Respondent shall ensure that USEPA personnel and authorized representatives of the USEPA have access to the laboratories for the purpose of ensuring the accuracy of laboratory results related to the Site.
- d. For any analytical work performed under this Settlement Agreement, including but not limited to that performed in a fixed laboratory, in a mobile laboratory, or in on-Site screening analyses, Respondents shall submit to EPA, within thirty (30) days after acceptance of the analytical results, a "Non-CLP Superfund Analytical Services Tracking System" form with respect to each laboratory utilized during a sampling event. Each such form shall be submitted to the EPA OSC, and a copy of the form and transmittal letter shall also be sent to:

Regional Sample Control Center Coordinator (RSCC)  
USEPA, Division of Environmental Science & Assessment  
MS-215

2890 Woodbridge Avenue  
Edison, New Jersey 08837.

- e. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.
- f. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than 5 business days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

26. The Transportation and Disposal Plan shall outline procedures for the proper transportation and disposal of materials as required for implementation of the Work as set forth in Paragraph 23 of this Settlement Agreement. The Plan will include the identification of the proposed disposal facilities for all waste streams and include waste profile information, facility acceptance documentation, and analytical characterization of each waste stream. In addition the Plan will include the following information to be determined and documented by the Respondents:

- a. the valid RCRA transporter and disposal identification numbers for each proposed transporter and disposal company;
- b. the most recent six-month State or EPA regulatory inspection results of each disposal company;
- c. documentation of the current permit status of proposed transporters and disposal facilities; and
- d. the date of the most recent State or EPA regulatory inspection of each proposed disposal company, and any special provisions or conditions attached to the RCRA disposal permits as a result of the most recent inspection.

Respondents shall provide all of the information required in a.- d. above to the EPA On-Scene Coordinator ("OSC") prior to shipping any hazardous waste off the Site. After permitted disposal facilities have been identified, all wastes shall be properly manifested and shipped off-Site via permitted transporters. All final signed manifests, bills of lading and certificates of destruction or disposal will be provided to the OSC upon receipt by Respondents.

Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the OSC. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards. Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state

27. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for post-removal site control consistent with Section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondent shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

28. Reporting.

a. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every 30th day after the date of receipt of EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

29. The Work Plan, progress reports, the Final Report and other documents required to be submitted to EPA under this Settlement Agreement shall be sent to the following addressees:

2 hard copies and 1 electronic copy to:

U.S. Environmental Protection Agency Region 2  
2890 Woodbridge Avenue  
Building 209 (MS-211)  
Edison, New Jersey 08837  
Attention: Kelli Lucarino, On-Scene Coordinator

1 electronic copy to:

New Jersey Superfund Branch  
Office of Regional Counsel

United States Environmental Protection Agency Region II  
290 Broadway, 17th Floor  
New York, New York 10007-1866  
Attention: William J. Reilly, Jr.

NJDEP (Address to be provided)

b. Respondent shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee. Respondent who own or control property at the Site also agree to require that its successors comply with the immediately proceeding sentence and Sections IX (Site Access) and X (Access to Information).

30. Final Report. Within sixty (60) days after completion of the work, Respondent shall submit for EPA review and approval a Final Report summarizing the actions taken to comply with this Settlement Agreement. The Final Report shall include:

- a. A synopsis of all Work performed under this Settlement Agreement;
- b. A detailed description of all EPA-approved modifications to the Work Plan which occurred during Respondent's performance of the Work required under this Settlement Agreement;
- c. A listing of quantities and types of materials removed from the Site or handled on-Site;
- d. A discussion of removal and disposal options considered for those materials;
- e. A listing of the ultimate destination of those materials;
- f. A presentation of the analytical results of all sampling and analyses performed, including QAPP data and chain of custody records;
- g. Accompanying appendices containing all relevant documentation generated during the Work (e.g. manifests, bills of lading, invoices, bills, contracts, certificates of destruction and permits;
- h. An accounting of expenses incurred by Respondent in performing the work; and
- i. The following certification signed by a person who supervised or directed the preparation of the Final Report:

"I certify that, to the best of my knowledge and belief, the information

contained in and accompanying this document is true, accurate, and complete."

### **IX. SITE ACCESS**

31. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by the Respondent, the Respondent shall, commencing on the Effective Date, provide EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

32. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 20 days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if after using its best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

33. Notwithstanding any provision of this Settlement Agreement, EPA and the State retain[s] all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

### **X. ACCESS TO INFORMATION**

34. Respondent shall provide to EPA and the State, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

35. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be

afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

36. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent assert such a privilege in lieu of providing documents, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

37. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

## **XI. RECORD RETENTION**

38. Until 10 years after Respondent receipt of EPA's notification pursuant to Section XXIX (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Respondent receipt of EPA's notification pursuant to Section XXIX (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

39. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent assert such a privilege, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.



40. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

## **XII. COMPLIANCE WITH OTHER LAWS**

41. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws.

## **XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

42. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at (732) 906-6850 of the incident or Site conditions. In the event that Respondent fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

43. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC at 732-321-6665 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

#### **XIV. AUTHORITY OF ON-SCENE COORDINATOR**

44. The OSC shall be responsible for overseeing Respondent's implementation of this Settlement Agreement.

45. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

#### **XV. PAYMENT OF FUTURE RESPONSE COSTS**

46. Payment of Future Response Costs

a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a standard Regionally-prepared cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 48 of this Settlement Agreement.

b. Respondent shall make all payments required by this Paragraph by ETF according to the following instructions:

(1). Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided below:

- Amount of payment
- Bank: **Federal Reserve Bank of New York**
- Account code for Federal Reserve Bank account receiving the payment:  
**68010727**
- Federal Reserve Bank ABA Routing Number: **021030004**
- SWIFT Address: **FRNYUS33**  
33 Liberty Street  
New York, NY 10045
- Field Tag 4200 of the Fedwire message should read:
- **D 68010727 Environmental Protection Agency**
- Name of remitter:
- Settlement Agreement Index number: **CERCLA-02-2012-**
- Site/spill identifier: **A296**

(2). At the time of payment, Respondent shall send notice that such payment has been made by email to [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov), and to:

EPA Cincinnati Finance Office  
 26 Martin Luther King Drive  
 Cincinnati, Ohio 45268  
 Attention: Richard Rice;

William J. Reilly, Assistant Regional Counsel  
 U.S. Environmental Protection Agency, Region II  
 Office of Regional Counsel  
 290 Broadway, 17th Floor  
 New York, New York 10007-1866; and

Such notice shall reference the date of the EFT, the payment amount, the name of the Site, the Settlement Agreement index number, and Respondent's name and addresses.

(3) The total amount to be paid by Respondent pursuant to Paragraph 46 shall be deposited by EPA in the Caswell Strauss Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

47. In the event any payment(s) for Future Response Costs are not made within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

48. Respondent may contest payment of any Future Response Costs billed under Paragraph 46 if they determine that EPA has made a mathematical error, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 46. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of New Jersey and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the EPA OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of

the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 46. If Respondent prevail concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 46. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

## **XVI. FORCE MAJEURE**

49. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, increased cost of performance, or a failure to attain performance standards/action levels (i.e., 800 ppm lead concentration in soil).

50. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within 3 days of when Respondent first knew that the event might cause a delay. Within 2 days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

51. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

## **XVII. STIPULATED PENALTIES**

52. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 53 and 54 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

### **53. Stipulated Penalty Amounts - Work.**

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 54(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day
\$500	15th through 30th day
\$1000	31st day and beyond

b. Failure to submit any of the following when due:  
the Work Plan, the Health and Safety Plan, the QAPP, the Transportation and Disposal Plan and the Final Report.

54. **Stipulated Penalty Amounts - Reports.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Section VIII :

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 14th day
\$300	15th through 30th day
\$500	31st day and beyond

55. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 65 of Section XX, Respondent shall be liable for a stipulated penalty in the amount of \$50,000.00

56. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA

notifies Respondent of any deficiency. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

57. Following EPA's determination that Respondent have failed to comply with a requirement of this Settlement Agreement, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

58. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties. All payments to EPA under this Section shall be paid by ETF in accordance with the instructions provided in Paragraph XX above

59. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

60. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

61. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 58. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Section, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, Paragraph 66. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

### **XIII. COVENANT NOT TO SUE BY EPA**

62. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs. This covenant not to sue shall take effect upon receipt by EPA of all the Future Response Costs due under Section XV of this

Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Future Response Costs as required by Sections XV and XVIII of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondent and does not extend to any other person.

### **XIX. RESERVATIONS OF RIGHTS BY EPA**

63. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement Agreement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

64. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside the OTR Land;

g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials from the OTR Land onto any adjoining land; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

65. Work Takeover. In the event EPA determines that Respondent have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in its performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

## **XX. COVENANT NOT TO SUE BY RESPONDENT**

66. Respondent covenants not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the WorkFuture Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. §1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work, Past Response Costs, or Future Response Costs.

67. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).



## **XXI. OTHER CLAIMS**

68. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

69. Except as expressly provided in Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

70. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. §9613(h).

## **XXII. CONTRIBUTION**

71.a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondent are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Workand Future Response Costs.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent have, as of the Effective Date, resolved its liability to the United States for the Workand Future Response Costs.

## **XXIII. INDEMNIFICATION**

72. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agree to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held

out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

73. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

74. Respondent waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

#### **XXIV. INSURANCE**

75. At least 7 days prior to commencing any on-Site work under this Settlement Agreement, Respondent shall cause its contractors doing any of the Work at the Site to secure, and maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of \$10 million dollars, combined single limit, naming EPA as an additional insured. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

#### **XXV. FINANCIAL ASSURANCE**

76. Within 90 days of the Effective Date, Respondent shall establish and maintain financial security for the benefit of EPA in the amount of \$150,000. in one or more of the following forms, in order to secure the full and final completion of Work by Respondent:

- Work;
- a. a surety bond unconditionally guaranteeing payment and/or performance of the
  - b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA;
  - c. a trust fund administered by a trustee acceptable in all respects to EPA;
  - d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;

77. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondent shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 76, above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

78. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 77 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA.

79. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

## **XXVI. MODIFICATIONS**

80. The OSC may make modifications to any plan or schedule or Statement of Work in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

81. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 80.

82. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

## **XXVII. ADDITIONAL REMOVAL ACTION**

83. If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within 30 days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement Agreement. Upon EPA's approval of the plan pursuant to Section VIII, Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVII (Modifications).

## **XXVIII. NOTICE OF COMPLETION OF WORK**

84. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including post-removal site controls, payment of Future Response Costs, or record retention, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

## **XXIX. INTEGRATION/APPENDICES**

85. This Settlement Agreement and its appendices constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements

or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

**XXX. EFFECTIVE DATE**

86. This Settlement Agreement shall be effective 2 days after the Settlement Agreement is signed by the Regional Administrator or his/her delegate.



The undersigned representative of Respondent certifies that it is fully authorized to enter into the terms and conditions of this Settlement Agreement in the matter of the U.S. EPA Index Number II-CERCLA-02-2012-2025, relating to Land at 1660 Oak Tree Road Edison Township, Middlesex County, New Jersey.

Agreed this 23 day of July, 2012.

For Respondent

By CHARLES L. ALLEN

Title

MANAGER





The undersigned Party enters into this Settlement Agreement in the matter of the U.S. EPA  
Index Number II-CERCLA-02-2012-2025, relating to Land at 1660 Oak Tree Road Edison Township,  
Middlesex County, New Jersey.

It is so ORDERED and Agreed this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

BY: 

for Walter Mudgan, Director

DATE: 7/24/12

Emergency and Remedial Response Division  
Region II

U.S. Environmental Protection Agency

EFFECTIVE DATE: \_\_\_\_\_

